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# Reforming abortion legislation in Northern Ireland; threats, opportunities and political expediency



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# Current Situation

- ▶ Abortion is *mostly* illegal in Northern Ireland
- ▶ Exceptions are when the pregnancy has been deemed to threaten the life of the pregnant woman.
- ▶ Or, that the adverse effect on the woman's physical or mental health is both “real and serious” and “permanent or long-term”.

# Current Situation

- ▶ Difficult to meet threshold and services are difficult to access. In 2015/16 there were 16 abortions carried out in NI
- ▶ Persistent harassment of women who attempt to use services and the service staff
- ▶ A Court of Appeal judgment in 2004 called for guidance on the law, which still does not exist.

# How Did We Get Here?

- ▶ 1861 Offences Against the Person Act – makes ‘procuring a miscarriage’ or assisting a woman to do so punishable by up to life in prison.
- ▶ 1967 Abortion Act in Great Britain, not extended to Northern Ireland – neither Westminster nor Stormont has shown enough political will
- ▶ The Democratic Unionist Party (DUP) have sought to increase restrictions in recent years

# Attempt To Extend Abortion Act to NI in 2008



# Attempt To Extend Abortion Act to NI in 2008



# The Details from 2008

- ▶ Attempts made by Emily Thornberry MP and Diane Abbott MP to amend the Human Fertilisation and Embryology Bill to extend abortion to NI
- ▶ Blocked by Prime Minister Gordon Brown and Harriet Harmon, Leader of the House of Commons
- ▶ Speculation that Labour had deal with DUP in return for supporting increasing detention without charge



# Post Good Friday Agreement

- ▶ Healthcare matters were devolved to the Northern Ireland Assembly in 1999
- ▶ Criminal justice devolution was in 2010
- ▶ However, there has been no functioning Northern Ireland Assembly since 26<sup>th</sup> January 2017 (nor was there from October 2002 to May 2007)

# Former NI Department of Justice (DoJ) Minister



# Political Setbacks

- ▶ October 2014: David Ford MLA, launched a public consultation on whether to enable abortion in cases of fatal foetal abnormality (FFA) and rape
- ▶ April 2015: he announced he would seek to legislate for FFA only.
- ▶ February 2016: the NI Assembly voted against this - 59 votes to 40. He has since sought two private members' bills regarding FFA

# Sarah Ewart, Sadly One of Many



# Legal Challenge

- ▶ November 2013 the NI Human Right's Commission (NIHRC) advised DoJ that existing abortion law violated women and girls' rights re. FFA and rape
- ▶ In December 2014 (during the consultation) it launched legal proceedings against DoJ
- ▶ NIHRC argued that three European Convention of Human Rights articles were directly affected

# Legal Challenge

- ▶ Article 3: freedom from torture / inhumane treatment
- ▶ Article 8: Right to private and family life
- ▶ Article 14: Rights without discrimination

# A Legal Step Forward then Back

- ▶ In November 2015, the High Court in Belfast found in favour of NIHRC, re. Article 8
- ▶ However, the NI Court of Appeal overturned this decision on 29<sup>th</sup> June 2017
- ▶ A further appeal was heard by the UK Supreme Court over 3 days in October 2017 – await ruling

# Another Legal Setback

- ▶ In 2012, a NI girl aged 15, accompanied by her mother, travelled to England for a privately funded abortion
- ▶ They legally challenged the lawfulness of the English Department of Health for denying the girl an NHS funded abortion
- ▶ The High Court of England ruled against the daughter and mother



# Another Legal Setback

- ▶ It concluded that GB NHS regions weren't required to fund abortions for NI women,
- ▶ This was because the devolved power in NI (mainly) viewed this form of treatment as unlawful.
- ▶ Following appeal, on 14<sup>th</sup> June 2017, the UK Supreme Court upheld the High Court's decision

However, by 29<sup>th</sup> June 2017,  
Westminster announced the English  
NHS would waive abortion fees for  
NI women

# Orchestrating a Political U-Turn



# The Political U-Turn

- ▶ Following poor general election results, the Conservative Party agreed a “supply and confidence” arrangement with the DUP
- ▶ Stella Creasy MP tabled an amendment to the Queen’s Speech to commit to fund NHS abortions in England for NI women
- ▶ Tory MPs showed enthusiastic support

# Funding The U-Turn

- ▶ To save the “supply and confidence” deal, Philip Hammond, Chancellor of the Exchequer voiced commitment to fund NHS abortions
- ▶ This negated need to debate Queen’s Speech
- ▶ Amendment withdrawn, rebellion averted and concession to NI women granted – for now

# Threats

- ▶ DUP holding the balance of power in Westminster – (except where fear of falling off the edge of a cliff can be used to gain concessions)
- ▶ As with marriage equality, NI at risk of being left behind rest of UK and Ireland, should the Irish people vote to repeal the 8<sup>th</sup> amendment in May
- ▶ Brexit and the loss of the European Convention of Human Rights

# Opportunities

- ▶ New leader in Sinn Fein more pro choice than party.  
Pro-choice MLA from the Green Party
- ▶ UN's Convention on the Elimination of Discrimination Against Women (CEDAW)
- ▶ Momentum regarding marriage equality – parallel bills entering Commons and Lords.

# Opportunities

- ▶ The dysfunctionality of the Northern Ireland Assembly!  
Now is time to put pressure on Westminster
- ▶ People in UK appear genuinely shocked at regressive nature of NI politics regarding gender justice – issue of abortion is gaining momentum
- ▶ Pro-choice activists engaged in genuinely collaborative activism e.g. Alliance for Choice



# A4C Activists



# Analysis

- ▶ Ethno-nationalism, the legacy of colonialism and internal conflict has a polarising effect. Please do not underestimate the scale of the challenge
- ▶ Legislative change needs political leadership. The consociational assembly will not reform abortion law
- ▶ Pro-choice women are left torn between local ownership of politics and bodily autonomy

# Analysis

- ▶ Regardless of who is in power in Westminster, cross party intervention needed, as happened on 29<sup>th</sup> June
- ▶ Political expediency, is arguably both the biggest threat and opportunity to achieving abortion reform
- ▶ In complete support of the agency and activism of NI women, they need support in GB, Ireland and beyond

# Civil Disobedience



# Civil Disobedience in Action

- ▶ In May 2016 Diana King, Collette Devlin and Kitty O' Kane decided to use this tool to push for legislative reform and protest against prosecutions
- ▶ Their selflessness gives grounds for optimism amidst such adversity
- ▶ They inspire reflection on how far one is prepared to take activism. So?





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